

**THE TOWN OF FOREST HEIGHTS
RESOLUTION 33-19**

A RESOLUTION FOR THE ADOPTION OF GUIDELINES FOR THE FOREST HEIGHTS POLICE DEPARTMENT REGARDING THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW AND DISCRIMINATORY PROFILING

Introduced by: Councilperson Cynthia Mann

WHEREAS, the Council finds that questions have arisen as to the extent to which the Forest Heights Police Department ("FHPD") may or should cooperate with federal officials regarding the enforcement of federal immigration laws; and

WHEREAS, the Mayor and Council find that to date neither the Town nor its police department have entered into any agreements or MOU's with the U.S. Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") agency or any other the federal law enforcement agency to perform immigration enforcement functions; and

WHEREAS, the Office of the Attorney General of Maryland has issued a guidance memorandum dated August 2015 and entitled "Ending Discriminatory Profiling in Maryland;" and

WHEREAS, the Office of the Attorney General of Maryland has also issued a guidance memorandum dated December 2018 and entitled "Local Enforcement of Federal Immigration Law: Legal Guidance for Maryland State and Local Law Enforcement Officials;" and

WHEREAS, the Attorney General of Maryland states that when ICE learns that a local law enforcement agency has custody of an individual who might be in the country illegally, it might issue an immigration detainer, which advises local officials, mainly local jails, that ICE is seeking custody of the person and asks the local agency to hold the individual for a period not to exceed 48 hours to allow ICE time to assume custody; and

WHEREAS, according to the Center for Immigration Studies, an Immigration Detainer is the primary tool used by ICE to gain custody of criminal aliens for deportation and it is a notice to another law enforcement agency that ICE intends to assume custody of an alien and includes information on the alien's previous criminal history, immigration violations, and potential threat to public safety or security; and

WHEREAS, on September 30, 2014, the Director of the County Department of Corrections (sometimes known as the Detention Center or County Jail) issued an order whereby the County Jail would no longer honor ICE Immigration Detainers unless accompanied by a warrant; and

WHEREAS, according to the State's Attorney Office, prior to being taken into custody, police will conduct a search of an arrested person and the officers are entitled to seize any contraband or evidence found during the search found in custody, and once a defendant is in custody, he or she may be identified by the victim or witnesses, and he or she may make a statement to the police; and

WHEREAS, according to Chapter 12, Section 3 of the FHPD General Orders (G.O. 2016-1) "[p]ersons arrested by FHPD officers will be transported by FHPD officers to either the

The Town of Forest Heights

Resolution 33-19

Page 1

**THE TOWN OF FOREST HEIGHTS
RESOLUTION 33-19**

Hyattsville or the Upper Marlboro, Prince George's County Detention Center [and] [t]he fingerprinting and photographing process of arrestees will be done by the Detention Center personnel;" and

WHEREAS, the Mayor and Council deems the regulation and control of immigration in the United States to be the paramount responsibility of the Government of the United States of America, and further considers that discriminatory profiling by police is inconsistent with the Town's enduring commitment to equality under the law; and

WHEREAS, although federal law does not require or mandate any local government or law enforcement officer to communicate with federal immigration authorities, 8 U.S. Code, § 1373 provides that "...no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual: (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service, (2) Maintaining such information, or (3) Exchanging such information with any other Federal, State, or local government entity;" and

WHEREAS, the Attorney General of Maryland opines that the Tenth Amendment of the U.S. Constitution bars the federal government from requiring local law enforcement officials to enforce federal immigration law; and

WHEREAS, the Mayor and Council finds that unless a person crosses the border unlawfully, the mere illegal presence of an individual in the United States is a civil offense and does not necessarily provide a clear basis for criminal arrest or detention; and

WHEREAS, it is the intent of the Mayor and Council in passing this Resolution to establish policy guidelines stated herein below to be construed as superseding or amending any conflicting or contrary police directives or orders promulgated by the Chief of Police to date or hereafter.

NOW THEREFORE BE IT RESOLVED, that the Town Council hereby adopts, and approves the following policy guidelines for the FHPD regarding the enforcement of federal immigration law:

1. No FHPD officer shall detain or arrest an individual solely based on known or suspected violations of Federal civil immigration law unless Federal or State law states otherwise.
2. The Town of Forest Heights' police officers may not hold an arrested suspect or detainee beyond their State-law release date in the absence of a judicial warrant or probable cause that the subject has committed a crime.
3. Although custody of arrested persons are typically transferred to the County Detention Center, a FHPD officer having custody of an arrestee or detainee may only respond to

**THE TOWN OF FOREST HEIGHTS
RESOLUTION 33-19**

immigration detainees when they are accompanied by a judicial warrant, or when further inquiry gives the police officer probable cause to believe that a crime, not merely a civil offense, has been committed.

4. The FHPD may not enter into an agreement under § 287(g) of the Immigration and Nationality Act, as codified at U.S. Code, § 1357(g), with ICE to perform immigration-enforcement functions unless expressly approved by the Town Council.
5. The provisions hereof shall not be construed as prohibiting officers from investigating, detaining or arresting violators of the non-immigration laws of United States, the State of Maryland, Prince George's County and the Town of Forest Heights, or assisting any law enforcement agency with investigations or arrests relating to non-immigration criminal activity and suspected criminal activity.
6. When conducting routine police activity unconnected to an investigation of a specific crime, organization, or scheme, the FHPD may not consider race, ethnicity, national origin, gender, gender identity, sexual orientation, disability or religion as a basis for prosecution unless said classifications are part of a specific crime, organization, or scheme being investigated.
7. When investigating a specific criminal offense, criminal organization, or crime scheme, law enforcement may only consider race, ethnicity, national origin, gender, gender identity, sexual orientation, disability or religion if police are in possession of credible information that makes the defining personal characteristic directly relevant to the investigation of a specific offense, organization, or scheme.

AND BE IT FURTHER RESOLVED that the Mayor and Town Council of Town of Forest Heights, Maryland hereby authorizes and approves the Mayor on behalf of the Town to promulgate any police directives necessary to carry out the intent of this Resolution; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon passage.

PASSED this 19 day of June 2019.

APPROVED: By Resolution of the Town Council of The Town of Forest Heights, Maryland.

ROLL CALL VOTE

YEA/NAY/ABSTAIN/ABSENT

MUHAMMAD

Nay

KENNEDY II

Yea

MANN

Yea

BARNES

Yea

The Town of Forest Heights
Resolution 33-19

**THE TOWN OF FOREST HEIGHTS
RESOLUTION 33-19**

HINES

WASHINGTON

NOBLE

Absent
Yea
Yea

I HEREBY CERTIFY that the above Resolution No. 33-19 was passed by the required yea and nay vote of the Mayor and Council of Forest Heights on the 19 day of June 2019.

ATTEST:

MAYOR AND COUNCIL OF THE TOWN OF
FOREST HEIGHTS, MARYLAND

SIGNATURE ON FILE

Sherletta Hawkins, Town Clerk

SIGNATURE ON FILE

Habeeb-Ullah Muhammad, Mayor

SIGNATURE ON FILE

Calvin Washington, Council President